

UGANDA PROSECUTOR

VERSUS

LOTYANG RAPHAEL ACCUSED

BEFORE: THE HON. MR. JUSTICE S.G. ENGWAU

JUDGMENT:

The accused is indicted for rape, contrary to sections 117 and 118 of the Penal Code Act.

The allegation is that Lotyang Raphael on or about the 17th day of March, 1993 at Amero village, Acowa Sub-County in the Soroti District by force had unlawful carnal knowledge of Imodot w/o Eurien Robert without her consent.

In her testimony, the complainant PW1 said that on 17.3.93 at around 4 p.m. she was inside her house when the accused whom she did not know before came and sat at the doorway. He asked her to come out.

On reaching where the accused was and without telling why he was calling her, a struggle ensued. The accused grabbed the complainant around the chest with both hands and started caressing her breasts. In a moment he threw her down and she fell on her side. She was on a dress and half-petty only without a knicker. In that situation, the accused opened her thighs by force using his hands.

Immediately that was done, the accused quickly undressed his underwear, pulled his missile and pushed inside the complainant vagina and there the game started. In protest the victim raised an alarm but the accused never cared but continued playing the game. He also threatened to kill her if she refused and he was armed with a long stick.

PW2 who was the first person to answer the alarm physically found the accused in the act. The complainant and the accused were lying sideways and he was in between her thighs having sexual intercourse. On seeing PW2, the accused disengaged himself and thereby withdrawing his penis from the vagina of PW1. He quickly put on the underwear which was only lowered below the knees.

PW2 witnessed all that and arrested the accused red-handed. As he was struggling with the accused, the victim also helped by holding the accused round the waist. The husband of the victim who was the next person to answer the alarm helped and the accused was overpowered on the spot. He did not have any chance of escaping from the scene of crime.

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Under arrest the accused was taken to the Vice-Chairman R.C.1 of the area and he was detained until the following morning when he was taken to the Gombolola Headquarters. From there the accused ended in the Police hence this case.

In his defence, the accused denied raping the complainant on the alleged day of the said incident or at all. He said on ~~that~~ day he met PW2 on the way and without any explanation ordered him to stop. By then the accused said he was returning his sheep to the kraal.

Later at the home of an R.C. official, he came to learn that he was arrested allegedly for stealing a small jerrycan. He said he was arrested without possession of the said jerrycan but planted on him at the home of the R.C. official by somebody he did not identify as there were many people at the time. He further said even the Police or court when he first appeared never informed him of the allegation of rape now before the court.

On a charge of rape the corroborative evidence must confirm in some material particular that intercourse has taken place and that it has taken place without the woman's consent, and also that the defendant was the man who committed the crime.

In her testimony, the complainant (PW1) said on 17.3.93 at around 4 p.m. the accused found her alone at her home and by force and threats of wanting to kill her, had sexual intercourse with her without her consent. She did not know the accused before and to disprove his unlawful action, she raised an alarm.

An eye witness, PW2 who was the first to answer the alarm of the victim, actually found the accused having sexual intercourse with her. He found the accused in between the complainant's thighs with the penis right inside her vagina. On seeing him, the accused disentangled himself and in the process the witness physically saw his penis dismantling from the complainant's vagina. He arrested the accused red-handed at the scene of crime. In my view that evidence of an eye witness corroborates the complaint raised by PW1 that she was raped on that day. Whoever attacked her on the day in question, had unlawful carnal knowledge of her without her consent. Elements of raising an alarm and the struggle which ensued justify her claim that she did not consent to the act.

Defence claim that the accused was arrested on that day allegedly for stealing a jerrycan does not hold water in view of the overwhelming evidence for the allegation of rape. Although medical evidence would be of vital importance, its omission is not fatal in the present case.

In sexual offences, in so far as the testimony given by the victim is concerned, the court always warns itself and assessors of the desirability for corroboration of such evidence in a material particular implicating the accused, but having done so the court may convict in the absence of corroboration if satisfied that her evidence is truthful:

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In the instant case, it is my humble view that evidence of PW2 is corroborative of the complaint raised by the victim, PW1 that her rapist had unlawful carnal knowledge of her without her consent. In case that holding is wrong, I have already warned the assessors and myself of the danger of acting on the uncorroborated testimony of the complainant and having done so I would still convict in the absence of corroboration as I am satisfied that her evidence is truthful.

In view of the possibility of error in identification by the complainant, corroborative evidence confirming in a material particular her evidence that the defendant was the guilty man is just as important as such evidence confirming that intercourse took place without her consent: James Vs. R (1971) AC 299.

In the present case, the incident is alleged to have taken place in broad day light at around 4 p.m. The complainant had ample time to identify her attacker and that attacker was caught red-handed by PW2 while doing the act. He was overpowered by PW1, PW2 and PW3 at the scene of crime and thereafter taken to the authority resulting now the case being before court. Moreover, PW2 who arrested the accused in the act knew him before. In the circumstances, mistaken identification does not arise. Therefore, it was the accused who actually committed the crime.

In the premises, the accused is found guilty as charged and accordingly convicted.



STEVEN GEORGE ENGWAU

JUDGE

8.10.94

11.10.94: Accused before the court.
Mr. Oyoit for accused on State brief.
Ms Nandawula for the State.
Opio Emmy interpreter in Ateso.
Judgment delivered in open court.



STEVEN GEORGE ENGWAU

JUDGE

11.10.94.

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S e n t e n c e: Although the accused is first offender and aged about 40 years old, he is convicted of a very serious offence which carries maximum sentence of death. The fact that he is a married man with four children aggravates the matter. He should have accomplished his lustful act by regularly having sexual intercourse with his wife if he so wished.

Marriage life must be respected and with AIDS rampant in the country sex maniacs in the like of the accused are easy agents in the spread of the disease.


Court has a duty to protect weak sex in the like of the victim.

Accordingly, the accused is sentenced to six years' imprisonment.


STEVEN GEORGE ENGWAU
JUDGE

11.10.94.

R/A explained against conviction and sentence.


STEVEN GEORGE ENGWAU
JUDGE

11.10.94.